United States Court of Appeals

for the Second Circuit

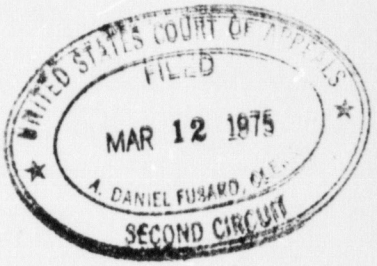
APPELLANT'S BRIEF

ORIGINAL 75-7074

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

DOCKET NO. 75-7074



EL MESON ESPANOL,

Plaintiff-Appellant,

-against-

NYM CORPORATION,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S BRIEF

LAWRENCE LAUER
Attorney for Plaintiff-Appellant
36 West 44th Street
New York, New York 10036
PL 2-1416

I N D E X

CASES CITED

STATUTES AND AUTHORITIES CITED

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JURISDICTIONAL STATEMENT

This is an appeal from an order dated December 27, 1975 by JUDGE CHARLES L. BRIEANT, JR., granting the defendant-appellee's motion for summary judgment dismissing the complaint, upon the ground that it failed to adequately state a cause of action and the plaintiff-appellant further appeals from the

judgment entered on January 17, 1975 dismissing the said action.

STATEMENT OF FACTS

This is an action brought by the plaintiff, a New Jersey corporation, which was formed by Hector Maury and his wife, Maricela Maury, to operate a restaurant and bar which they had purchased and which was located at 4018 Bergenline Avenue, Union City, New Jersey. Mr. and Mrs. Maury were the only stockholders and officers of the said corporation. Neither Mr. or Mrs. Maury had ever been arrested or charged with any crime either in the United States or in Cuba, the country from which they fled when it became a Communist dictatorship.

The defendant corporation is a New York corporation which publishes a magazine known as "New York". This magazine is widely read and distributed in the Metropolitan New York area and is published weekly. In the November 5, 1973 issue of the magazine, a long article appeared and dealt with the illegal traffic in cocaine. The article which was written by one Thomas Plate, who is identified in an affidavit submitted with the defendant-appellee's motion as a former Senior Editor of the magazine. Set forth at great

length in the article was a list of various places where the illegal traffic in cocaine was allegedly being carried on. The article then mentioned the premises operated by the plaintiff corporation as a restaurant, to be a place where the illegal traffic in cocaine was regularly conducted. The exact language used in the article concerning the plaintiff-appellant's premises which made this allegation was as follows:

> "They, (i.e. the cocaine dealers) are still out there across the Hudson River, too- in Elizabeth, in West New York, in Union City. Late at night in Union City, bars like El Tropicano at 49th Street and Hudson Avenue and restaurants like El Meson Espanol at 4018 Bergenline Avenue become good places to meet a connection." (emphasis supplied)

It is widely known that in the context of the illegal drug traffic the words "to meet a connection" refers to the purchase and sale of illegal drugs between a drug user and a seller of illegal drugs. The use of this language in connection with the plaintiff-appellant's premises created the impression that the plaintiff corporation encouraged and participated in the illegal drug traffic. This language in effect accused the plaintiff corporation of having committed a violation of Section 24:21-21, subdivision 6, N.J.S.A., which

makes it a misdemeanor to knowingly maintain a premises wherein the selling or handling of illegal drugs is conducted. At the very least the article gave the public the impression that drug peddlers and drug users frequented the plaintiff's restaurant premises with the cooperation and encouragement of the plaintiff corporation.

The fact of the matter is that there was never an arrest made on the plaintiff's premises nor was any drug peddler or drug pusher ever identified by the defendant-appellee as having been on the said plaintiff-appellant's restaurant premises. The plaintiff-appellant contends that the allegations contained in the defendant-appellee's article were completely false and without any basis in fact. The plaintiff-appellant further contends that as a result of the defamation contained in the article the plaintiff's business has been ruined, since the honest people of Union City, New Jersey who formerly were the customers of the plaintiff-appellant's restaurant no longer frequent the plaintiff-appellant's restaurant with the result that its business has been destroyed.

SPECIFICATION OF ERROR

The lower Court erred in granting summary judgment

to the defendant-appellee.

POINT I

A CORPORATION MAY PLEAD AN ACTION IN LIBEL PER SE

The plaintiff's first cause of action contained in the complaint herein which is under attack by the defendant's motion seeks to plead an action for libel per se. It is the plaintiff-appellant's contention that the article accuses it of having aided and abetted persons, who frequented its restaurant, in an illegal and criminal activity, namely the sale and traffic of cocaine. As a matter of fact, the statutes of the State of New Jersey specifically outlaw and make a misdemeanor, the type of activity with which the article in question says occurred on the premises operated by the plaintiff-appellant. Section 24:21-21, subdivision 6, New Jersey Statutes Annotated says the following:

> "It shall be unlawful for any person; (6) knowingly to keep or maintain any store, shop, warehouse, dwellinghouse, building, vehicle, boat, aircraft or any place whatsoever, which is resorted to by persons using controlled dangerous substances in violation of this act for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of this act."

Thus, the article herein directly accused the plaintiff-appellant corporation of having committed a crime in maintaining a place wherein was transacted illegal drug traffic. This allegation was completely false. The false allegation that a person or corporation has been guilty of a crime constitutes libel per se. Thus in the recent case, ROMER v. PORTNICK, which appeared in the New York Law Journal of June 4, 1974, Civil Court, New York County, Trial Term, Part XXXXIII, Judge Kassal, in considering this problem, said the following:

> "Whether particular language tends to defame a person depends, at least, in part, upon the temper of the times and the current of public opinion (Mencher v. Chesly, 297 N.Y. 94, 75 N.E. 2d 257 [1947]). The language used herein, however, clearly charged plaintiff with having committed larceny and other criminal conduct and, therefore constituted slander per se (Kaplan v. K. Ginsberg, Inc., 8 A.D. 2d 726, 186 N.Y.S. 2d 707 [2d Dept., 1959]; Weiner v. Vogel, 18 A.D. 2d 748, 232 N.Y.S. 2d 428]2d Dept. 1959]; Restatement of Torts, sec. 571."

A corporation may bring an action for libel per se just as an individual. Thus in the authoritative work, New York Jurisprudence Volume 35, page 56, the analysis of the New York State Law as it concerns the right of a corporation to bring an action for libel per se sets forth other grounds

aside from the accusation of the commission of crime for providing the basis for a corporation's action in libel per se. Thus, the commentator used the following language:

> "A corporation may maintain an action for libel or slander where the character or condition of its marketable products is misrepresented, or where the defamation relates to its business so as to affect the confidence of the public and drive away its customers, or where its credit is affected. Although a corporation has the right to maintain an action for libel when the publication assails its management or credit and inflicts an injury upon its business or property, it differs from an individual in that it has no character to be affected by a libel, and the words complained of in order to be libelous per se must affect its credit or property. In short, false defamatory statements of such a nature as to directly affect the credit of a corporation and to occasion it pecuniary injury are actionable without allegations of special damages. Thus, it has been held libelous per se to publish a charge that a news corporation has tapped the wires of a rival organization and thereby stolen news. So too, it is libelous per se to charge a corporation with blackmail, or threatening to commit a crime such as physical assault. And a charge that a corporation is guilty of swindling and making false representations, or that a business corporation went into bankruptcy recently, or a publication alleging a 'want of skill and honesty in the management of a corporation and in its officers,' is libelous per se."

Another leading case on the question of the right of a corporation to bring an action in libel per se is the case of ISAACS v. PAN AMERICAN TRADING COMPANY, 181 N.Y.S.

2d 19, 7 App. Div. 2d 757, the Court in considering this problem said the following:

> "The oral statements, alleged to have been made by respondent to banks and customers with which the corporate appellant was doing business, were to the effect that said appellant had acted illegally and had chosen an official whose reputation warranted care in future dealings with that appellant, and that its bank accounts were about to be 'tied up'. In our opinion, these statements were 'of so defamatory a nature as to directly affect credit and to occasion pecuniary injury' (Reporters' Ass'n of America v. Sun Printing & Publishing Ass'n. 186 N.Y. 437, 441, 79 N.E. 710, 711) to the corporate appellant, and were actionable without allegations of special damage (cf. Gurtler v. Union Parts Mfg. Co., 285 App. Div. 643, 140 N.Y.S. 2d 254, affirmed 1 N.Y. 2d 5, 150 N.Y.S. 2d 4; Nih v. Bolman, 307 N.Y. 725, 121 N.E. 2d 543; Hannes v. Bender, Sup., 115 N.Y.S. 2d 537; Walter v. Duncan, Sup., 153 N.Y.S. 2d 916; Courtney v. Marcus Loew Booking Agency, Sup., 125 N.Y.S. 2d 224, affirmed 283 App. Div. 867, 129 N.Y.S. 2d 915). A corporation may maintain an action based upon slander per se (Rosner v. Globe Valve Corp., 193 Misc. 351, 83 N.Y.S. 2d 496, affirmed 275 App. Div. 703, 87 N.Y.S. 2d 524)."

Another interesting decision which analyzed the right of a corporation in bringing an action for libel is the case of STEAK BIT OF WESTBURY, INC. v. NEWDAY, INC., 334 N.Y.S. 2d 325, in which the Court said the following:

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"In order to be defamatory, a statement must convey a degrading imputation. 35 N.Y. Jur., Libel and Slander, § 7, p. 476. See O'Connell v. Press Publishing Co., 213 N.Y. 352, 103 N.E. 556. In the case of claimed defamation of a corporation the test is whether the published statement relates to its business so as to affect the confidence of the public and drive away its customers. See, Roberters' Assn. v. Sun Printing and Publishing Ass., 186 N.Y. 437, 79 N.E. 710; Isaacs v. Pan American Trading Co., 7 A.D. 2d 757, 181 N.Y.S. 2d 19. However, where, as here, special damages are not claimed, Drug Research Corp. v. Curtis Publishing Co., 7 N.Y. 2d 435, 441, 199 N.Y.S. 2d 33, 37, 166 N.E. 2d 319, 322; Kings Creations, Ltd. v. Conde Nast Publications, Inc., 34 A.D. 2d 935, 311 N.Y.S. 2d 757, 'mere disparagement of the quality' of a product or service sold to the public is not libelous, in and of itself. Marlin Firearms Co. v. Shields, 171 N.Y. 384, 64 N.E. 163. The words written must go further than a bare opinion of quality. They must import that the supposedly libelling party is 'guilty of deceit or malpractice', or impute to him 'dishonesty, fraud, deception, or other misconduct in his trade'. Le Massena v. Storm, 62 App. Div. 150, 154, 155, 70 N.Y.S. 882, 884; Harwood Pharmacal Co., Inc. v. National Broadcasting Co., Inc., 9 N.Y. 2d 460, 463, 124 N.Y.S. 2d 725, 174 N.E. 2d 602; Payrolls and Tabulating, Inc. v. Sperry Rand Corp., 22 A.D. 2d 595, 257 N.Y.S. 2d 884; Tracy v. Newday, Inc., 5 N.Y. 2d 134, 182 N.Y.S. 2d 1, 155 N.E. 2d 853."

See also the case of ALL SEASONS RECREATION, INC. v. STRECKER, New York Law Journal, January 23, 1974, page 18, column 6M, in which the plaintiff alleged that the defendant

carried a sign in front of the business premises of the plaintiff corporation reading "All Seasons are frauds, All Seasons use inferior materials, All Seasons uses false advertising". The above was held to be libelous per se as tending to impeach plaintiff's integrity and business methods.

It is respectfully submitted that the language contained in the defendant's article was libelous per se on several grounds. First of all it was libelous per se because it accused the plaintiff of having committed a crime. Furthermore, the article was libelous per se because it accused the plaintiff of conducting its business in improper manner in that their premises was used as a place for the transaction of illegal business. These allegations drove away its regular customers and affected adversely its ability to obtain credit from its suppliers and other persons from whom it obtained credit.

POINT II

THE ARTICLE WHICH APPEARED IN THE DEFENDANT'S MAGAZINE CONVEYED THE IMPRESSION THAT THE PLAINTIFF'S PREMISES WERE BEING USED IN ILLEGAL DRUG TRAFFIC WITH THE PLAINTIFF'S APPROVAL AND COOPERATION.

The defendant-appellee urged, in the lower Court, as the basis for its motion to dismiss the complaint, the

theory that the words stating that the plaintiff-appellant's restaurant is a good place "to meet a connection" merely applied to the customers of the restaurant and didn't apply to the restaurant itself. The defendant urged that the proprietor of a restaurant has no control over its patrons and, therefore, this doesn't constitute defamation. The lower Court in adopting the defendant-appellee's theory relied on two cases set forth in the lower Court's opinion. Both of the cases relied upon by the lower Court do not support its position. In both cases the allegations made in the article under attack did not state that customers of the saloon in question were engaged in any illegal activity. The courts of the State of New York have always been careful to distinguish the accusation of the commission of a crime on a public restaurant's premises from criticism as to the method of operation or decor. In the first case relied upon by the lower Court, namely KENNEDY v. PRESS PUBLISHING COMPANY, 41 Hun 422, 3 N.Y.St. 139 (1886), the lower Court failed to take into account the language of the Court which specifically set forth that its attitude would be different if there were an allegation in the article which accused the saloon kepper of improper conduct of his establishment. Thus, the Court in the KENNEDY

case said the following:

> "The article complained of purports to be a description of various saloons at Coney Island, and of their frequenters. There is no mention of the plaintiff, save that there appears in the article a cut or picture of the interior of a saloon with the words beneath 'In Kennedy's.' The complaint is entirely wanting in innuendoes, and its only allegations are that the plaintiff was the proprietor of a concert hall, and that the publication, the whole of which is set forth, was of and concerning him. There is nothing in the cut or picture itself reflecting on any person. Taking the article in the strongest sense which it would bear, with the aid of proper innuendoes, it is a charge that the saloons of which it speaks are the resorts of improper characters, and that the influence of associations had there are bad. It may be also assumed that it charges that the plaintiff's saloon is one of this character. Granting all this, we think the libel is on the place and not on the person. There is nothing in the article charging that the plaintiff conducts his saloon improperly, or that he is responsible for the character of the guests."

In a subsequent case the New York Courts, in considering the effect of the decision in the KENNEDY case, specifically said that the KENNEDY case theory of "libel of the place" does not apply when the proprietor of an establishment is accused of allowing illegal acts to take place on his premises. Thus, the case of DEXTER v. PRESS PUBLISHING CO., 73 N.Y.S. 706, aff'd. 77 N.Y.S. 1124, the Court, in con-

sidering this problem, said the following:

> "Reliance is placed by defendant for support of the position taken by it on the cases of Kennedy v. Publishing Co., 41 Hun, 422, and Bosi v. Herald Co., 33 Misc. Rep. 622, 68 N.Y. Supp. 898, affirmed in 58 App. Div. 619, 68 N.Y. Supp. 1134. Neither of these cases, however, is in point on the libel here complained of. In the Bosi Case, the alleged libel was that plaintiff's restaurant was the resort of anarchists. In the Kennedy case, the alleged libel, if any, was that the plaintiff was the proprietor of a concert hall which was the resort of improper characters. There was no charge against the individuals who conducted the places, nor any claim that there was anything illegal in the maintenance of the places. In the present case, however, it may be fairly inferred from the alleged libelous article by reason of the statements concerning the connection of plaintiff's servants with the gambling, that such gambling was conducted on the premises with plaintiff's knowledge, it being unlawful under our law either to keep a room where gambling is conducted or to knowingly let or permit it to be used for such purpose. Pen. Code, § 343. Giving the complaint the liberal interpretation to which it is entitled, and allowing for the fair and reasonable inferences from the allegations, I am of the opinion that the demurrer must be overruled. The demurrer is overruled, with leave to defendant to answer upon payment of costs."

Another case which dealt with the question of libel per se resulting from the false accusation directed to the owner of a premises, who was accused of allowing the commission

of illegal acts to take place on his premises was in the case of McCLEAN v. NEW YORK PRESS CO., LIMITED, 19 N.Y.S. 262, in which the Court said the following:

> "The grounds urged by the appellant are, first, that the libel was only the libel of a think, and not of a person, and that, therefore, unless the plaintiff had shown that he had sustained pecuniary loss as the necessary and natural consequences of the publication, he could not recover. It is manifest that this point is not well taken. The phrase used, it is true, is 'disorderly house'. But a house cannot be disorderly. A house is necessarily staid and sedate. It is only what is in the house that makes it lively or otherwise. Therefore, when a house is spoken of as being disorderly, disreputable, or a bawdyhouse, it refers entirely to the character of the occupants; and it is their character which fixed the character of the thing. When, therefore, a house is spoken of as disorderly or as a bawdyhouse, or as disreputable, it is that the occupants are disorderly, are lewd persons, or are disreputable. It is idle, in a charge of this kind, to take about it being a libel of the house, where a house is called 'disorderly.'
>
> "It is further urged that the plaintiff did not prove the libel, as charged, referred to him, in that it didnot say or infer that the owner or lessee of the house was disorderly, or that such owner or lessee was in any way responsible for the character of the house, and that it appeared that there were other people residing in the house at the time of the publication besides the plaintiff, and that he, therefore, was only one of the people who resided in the house. We are not aware of any rule of law which provides that,

> where a number of persons are libeled at the same time, they are bound to unite in one action in order to get redress."

The lower Court in this case also relied on the case of DAUER & FITTIPALDI, INC. v. TWENTY FIRST CENTURY COMMUNICATIONS, INC., 43 A.D. 2d 178, 349 N.Y.S. 2d 736 (1st Dept. 1973). But in this decision also, the lower Court was misled in its understanding of the import of the New York Court's decision. The New York Court carefully stated that if an allegation was made that a restaurant permitted its premises to be a gathering place of low and unsavory characters it would indeed constitute libel per se. The Court in the DAUER & FITTIPALDI case said the following:

> "The article, viewed in its contest of fiction and deliberate humor, cannot reasonably be susceptible of a libelous meaning intending to harm the plaintiff; it does not purport to relate to actual events or depict real persons or places; nor does it impute to the plaintiff corporation that it knowingly permitted its restaurant to be a gathering place of low and unsavory characters. Indeed, the name of plaintiff's place is not related in the text at all; there is only a quick reference to the fictitious 'Stop and Frisk'. Nor does the presentation impugn the integrity of the plaintiff, nor ascribe moral turpitude or crime; nor charge it with dishonest practices, nor besmirch its products,

> nor commercially defame it in any way. Thus, on its face, the article complained of is not libelous, and this court so decides. Tracy v. Newsday, Inc., 5 N.Y. 2d 134, 182 N.Y.S. 2d 1, 155 N.E. 2d 853; Gambuzza v. Time, Inc., 18 A.D. 2d 351, 239 N.Y.S. 2d 466. Nor, viewed as against the genre of the magazine itself, the humorous setting of the article, and its off-beat treatment, can we reasonably accept the maleficent meaning plaintiff ascribes to it. Landau v. Columbia Broadcasting System, 205 Misc. 357, 128 N.Y.S. 2d 254, aff'd. 1 A.D. 2d 660, 147 N.Y.S. 2d 687."

Another interesting case concerning the question of libel per se of a corporation which is accused of allowing the commission of crimes on its premises or of engaging in the illegal activities is the case of ROSNER v. GLOBE VALVE CORPORATION, 83 N.Y.S. 2d 496, in which the Court, in considering this problem, said the following:

> "In this counterclaim it is alleged that the defendant manufactures brass plumbing supplies which it sells to jobbers and distributors. It has always maintained a good reputation for honesty, integrity and for fair and ethical dealing. Kokomo Sanitary Pottery Corporation and Woodbridge Sanitary Pottery Corporation manufacture pottery toilet fixtures which they too sell to jobbers and distributors. Pottery toilet fixtures of the type manufactured and sold by Kokomo and Woodbridge are a scarce item and the demand therefor exceeds the supply. On the other hand, brass plumbing supplies of the type manufactured and sold by the defendant are not scarce and the supply of the same is ample to meet the demand. On June 17, 1947

the plaintiff, in speaking to a customer of the defendant, spoke the following words: 'In order for you (meaning said customer) to get (meaning to purchase) pottery (meaning the products of Kokomo Sanitary Pottery Corp. and Woodbridge Sanitary Pottery Corp.) you have to buy brass (meaning the products of the defendant). An order for pottery is contingent upon an order for brass (meaning that unless an order for brass were given an order for pottery would not be accepted)."

"Then follows the innuendo that the words so used charged that the defendant was guilty of dishonest, unlawful, unethical and sharp business practices and of unfair dealings with its customers, by forcing tie-in sales of its products with those of Kokomo and Woodbridge; of conspiring with Kokomo and Woodbridge to the end that the latter would refuse to sell their products unless the customer at the same time purchased those of the defendant; of violating accepted business standards of ethics and fair dealings; of violating the anit-trust laws of the United States and of engaging in unfair business methods 'as prescribed by the Federal Trade Commission.' The words were false and defamatory, related to the defendant's business and were designed by the plaintiff to and did reflect adversely on the defendant in its business. * * *

"The plaintiff challenges the sufficiency of this counterclaim on the ground that what the plaintiff is charged to have said is not actionable per se and that no special damage is alleged. Unquestionably there is no sufficient allegation of special damage. The question still remains whether what was said was slanderous per se. If it is then, of course, no allegation of special damage is required to make it actionable.

"At the outset it is to be borne in mind that a corporation may maintain an action for libel or slander. New York Society for Suppression of Vice v. MacFadden Publications, Inc., 260 N.Y. 167, 183 N.E. 284, 86 A.L.R. 440. As the Court of Appeals said in First National Bank of Waverly v. Winters, 225 N.Y. 47, 52, 121 N.E. 459, ' * * * The same rule is applicable to a corporation as to individuals. Where the latter may recover without proof of special damage, a corporation may also. * * *'

"It is elementary in the law of defamation that if the spoken matter tends to hurt an individual in his business or profession, it is actionable without proof of special damage. By the same token, spoken matter which from its nature injures a corporation in its business or credit is actionable per se. That a charge of dishonest, unethical, sharp and unfair business practices must necessarily injury the reputation of a corporation in the community is, of course, not open to question.

"The claim in this action is that the charge of forcing tie-in sales was a charge of using unlawful, unfair and improper business methods. That is what the innuendo alleges the plaintiff meant. It is perfectly clear that the statement to the customer that he could not buy pottery unless he also bought brass was a charge of compelling a tie-in sale.

"Does the language also bear out the innuendo ascribed to it by the defendant? If the language is fairly susceptible of the meaning imputed by the innuendo, the question whether on the occasion stated in the counterclaim it was used in that sense by the plaintiff and so understood by those who heard it is for the triers of fact. King Kullen Grocery Co., Inc. v. Astor, 249 App. Div. 655, 291 N.Y.S. 488.

"Though the innuendo states that the defendant was charged with unlawful practices and with violation of the anti-trust laws of the United States, the defendant has not shown any specific statutory prohibition of tie-in sales as such. It is to be recalled that to render a false chrage of crime actionable per se the crime charged must involve moral turpitude. By analogy, a charge that a corporation has committed a crime or an unlawful act should not be held actionable per se unless the crime or act charged is of such character as necessarily to bring the corporation into disrepute. Not every infraction of law is within this category.

"The innuendo here, however, goes further. Besides attributing to the language used a charge of unlawful conduct, it states that it charged the defendant with dishonest, unethical, sharp and unfair practices and with violating accepted business standards of ethics and fair dealing. In its brief the defendant calls attention to provisions in decrees made in actions under the federal anti-trust laws enjoining tie-in sales. It is shown, too, that the Federal Trade Commission vies such sales with disfavor. Recently the United States has instituted an anti-trust suit against manufacturers of plumbing supplies, in which one of the grounds of complaint was the making of tie-in sales. What the plaintiff is alleged to have said may properly be set against this background. Can we hold that a jury would not be warranted in finding that what the plaintiff said at the time and in the circumstances stated in the counterclaim was intended by him and understood by his hearer to charge the improper commercial practices enumerated in the innuendo? I think not. If they could so find, then the defamatory matter is actionable without an allegation of special damage."

Another very interesting case which considered this question of libel per se as it applies to the owner or proprietor of a public place of accommodation was the case of STILLMAN v. PARAMOUNT PICTURES CORPORATION, 147 N.Y.S. 2d 504, in which the Court said the following:

> "There are further allegations that the plaintiff enjoys favorable reput and that neither he nor the business bearing his name has at any time catered to, harbored or been the gathering place for 'punch-drunk' fighters, and that the matter published is false, libelous and defamatory (Sixteenth) and that the phrase 'punch-drunk fighter' is accepted by the public as synonymous with 'derelict', 'bum' and descriptive of men who are degraded and despicable and was so used by the defendants and understood by the audience, the words having been spoken by the character in the picture as a disparaging comparison to another character who portrayed a chronic and psychopathic alcoholic (Eighteenth). * * *
>
> "Thus, in Merle v. Socioligical Research Film Corp., 166 App. Div. 376, 152 N.Y.S. 829, already cited in another connection, the picturing of the factory building owned by the plaintiff as a source from which employees were recruited into white slave traffic was held a libel of the plaintiff, without any allegation of special damage. Similarly, a charge of unlawful activity such as gambling in a building has been held a libel of its owner. Dexter v. Press Publishing Co., 36 Misc. 388, 73 N.Y.S. 706; McClean v. New York Press Co., 64 Hun 639, 19 N.Y.S. 262, See also Minott v. New York Times Co., 146 App. Div. 857, 131 N.Y.S. 828. These authori-

> ties are especially applicable here because of the nature of plaintiff's occupation. ***
>
> "The alleged libel states that a punch-drunk fighter could be got at the plaintiff's gymnasium. The meaning of a punch-drunk fighter as a derelict and degraded person and the context in which the expression was used, as set out in the complaint, (Eighteenth) have already been given. Quoting from dictionaries of American slang, the defendants attribute a different meaning to 'punch-drunk.' They say it means merely a person dazed by the impact of blows. Obviously, the term is not one in general use, having an accepted meaning. Were that the case, it might be argued with force that an innuendo purporting to read into the term something foreign to its accepted meaning was not a true innuendo at all. But that is not so here. However well-known the term may be to those who attend boxing bouts and prize fights or to sportsmen generally, it certainly is not one of whose meaning the court may take judicial notice. It is similar to a technical word or a colloquialism used in limited circles. What such words are intended and understood to mean on the given occasion must become the subject of proof."

The article herein, by stating that the plaintiff-appellant's restaurant premises were a good place "to meet a connection" accused the plaintiff-appellant corporation of committing a crime and allowing its place of business to become a place frequented by low and unsavory characters. This under the law of the State of New York constituted libel per se. If there is any question about the meaning of the words

"to meet a connection" used in the context of the illegal drug traffic, this is a question for the jury.

CONCLUSION

THE ORDER AND JUDGMENT APPEALED FROM SHOULD BE REVERSED.

Respectfully submitted,

LAWRENCE LAUER
Attorney for Plaintiff-Appellant
Office & P. O. Address
36 West 44th Street
New York, New York 10036

PL 2-1416

2 Copies Received

Date March 12, 1975

Firm Hall McKnight, Marett & Hamilton

By J. Hulsl